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No. _____

Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1992

CHARLES FRENCH, RAYMOND THOMASSON, MARYDA COLOWICK, MARIAN L. STEVENSON, MARY L. CRAWLEY AND MARY JOHNSTON,

PETITIONERS,

v.

THE METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE,

RESPONDENTS.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

George E. Barrett
Counsel for Petitioners
BARRETT, JOHNSTON & PARSLEY
217 Second Avenue North
Nashville, Tennessee 37201
615/244-2202

Douglas S. Johnston, Jr.
Phillip A. Purcell
BARRETT, JOHNSTON & PARSLEY
217 Second Avenue North
Nashville, Tennessee 37201
615/244-2202

56 pp

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Phillip A. Purcell
BARRETT, JOHNSTON & PARSLEY
217 Second Avenue North
Nashville, Tennessee 37201
615/244-2202

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No. 92-5325

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHARLES FRENCH, RAYMOND THOMASSON, MARYDA COLOWICK, MARIAN L. STEVENSON, MARY L. CRAWLEY, *Plaintiffs-Appellants,* MARY JOHNSON, *Intervening Plaintiff,*	]	Filed May 8, 1992
v.	]	ON APPEAL from the United States District Court for the Middle District of Tennessee
BILL BONER, et al., *Defendants* METROPOLITAN GOVERNMENT of NASHVILLE, DAVIDSON COUNTY, TENNESSEE *Defendant-Appellee.*	]	

Decided and Filed May 8, 1992

Before: MERRITT, Chief Judge; KEITH, Circuit Judge; and CELEBREZZE, Senior Circuit Judge.

MERRITT, Chief Judge. The question in this municipal reapportionment case is whether the Equal Protection Clause requires the City of Nashville to conduct new elections for 35 local legislators before their four-year terms expire in 1995. Nashville conducted its last city election for its 35 district council members according to a legislative apportionment plan based on the 1980 census figures rather than the 1990 census figures. The City held the election in August 1991 as required by its Charter. The Census Bureau did not make the 1990 census figures available to the city until a date in the spring of 1991. The date was too late for the City to devise and adopt a completely new districting plan and put it into effect with sufficient notice to allow candidates to qualify and

campaign prior to the impending August city election.

Because of population shifts from 1980 to 1990, the largest of the 35 council districts has almost three times as many people as the smallest district. There are large deviations from the average in many other districts as well, deviations that the parties agree will not pass constitutional muster if the council districts currently in effect must be tested against the 1990 census rather than the 1980 census under which the plan was drawn.

The question before us is whether the City has a constitutional duty to rerun the elections held just after the new decennial census data became available in 1991 but before the old apportionment plan could be changed and a new one put into

effect prior to the impending election. As the plaintiffs put the question, "Should the court allow the city to use the old 1980 census figures for 15 years when the districts are now grossly malapportioned under the 1990 census and the city has adopted a new constitutional plan to be used for the 1995 elections?"

We conclude, as did District Judge Higgins, that new elections are not required.[1] In any system of

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[1]Judge Higgins concluded his opinion below by pointing out his view of the consequences of a contrary holding: "However, if this Court were to require the defendant to hold a special election, the Court surely would be opening a pandora's box of litigation. The Court could be required to determine, at each election, whether the legislative districts are still constitutionally apportioned based on the most recent decennial census. If they are, will they continue to be? Will the Court need to maintain jurisdiction between elections? If they are not, what plan will be implemented? These examples may seem extreme at first glance, but upon further

representative government, it is inevitable that some elections for four-year or longer terms will occur on the cusp of the decennial census. Their terms inevitably will last well into the next decade; and, depending on shifts in population in the preceding decade, the representation may be unequal in the sense that the districts no longer meet a one-person-one-vote test under the new census.

Even after the reapportionment revolution that Chief Justice Warren believed constituted the most significant set of constitutional decisions of his tenure, *The Memoirs of Chief Justice Earl Warren* 306 (1977), mathematical equality

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contemplation they are very possible. Since the Supreme Court has determined that decennial reapportionment following the federal census meets constitutional standards, this Court will not require more."

in representation is not required at all times during the census and election cycles. Values other than mathematical equality in preserving majority rule are also at stake. In order to maintain relative mathematical equality in a population constantly on the move, we would have to have short terms of office and annual census updates. Short terms would sacrifice the stability and experience in office that longer terms contribute. Refusal to honor the preference of state and local bodies for longer terms would increase the costs of elections for taxpayers and candidates and would make it more difficult for citizens of limited means to participate in local elective politics. If new elections were ordered here, the process would undermine the settled expectations that both voters

and elected officials hold as a result of the election last year.

For these reasons the Supreme Court has never drawn hard and fast rules about the length of terms or how long after a decennial census year new elections under the new census must be conducted. The principles of mathematical equality and majority rule are important, but we should no allow them to outweigh all other factors in reviewing the timing of elections. In *Reynolds v.Sims*, 377 U.S. 533, 583, 585 (1964), Chief Justice Warren wrote that the Court was not imposing a rule that "decennial reapportionment is a constitutional requirement," although less frequent apportionment "would assuredly be constitutionally suspect." The Court also noted that where "an impending election is imminent and a state's election machinery

is already in progress, equitable considerations might justify a court in withholding the granting of immediate relief in a legislative reapportionment case, even though the existing apportionment scheme was found invalid." *Reynolds*, 377 U.S. at 585.

Due to the logistics of scheduling elections with four-year terms under the Nashville Charter, the first election after the 1980 census came in 1983, allowing council members to serve malapportioned districts for three years in the 1980s. Due to the difficulty of remapping those districts prior to the most recent 1991 elections, the newly elected council members will serve for five years into the decade of the 1990s. Thus, the 1980 census figures will govern for twelve years rather than ten years.

We do not believe that considerations of mathematical equality in representation or the presumption in favor of redistricting every ten years outweigh the considerations outlined above concerning the validity of four-year terms, the settled expectations of voters and elected officials, the costs of elections, and the need for stability and continuity of office.

We find no case authority contrary to this position and no law review or text material discussing the point at issue. In our representative democracy the courts are charged with the responsibility of keeping the channels of representative government and majority rule open and free from significant dilution of voting strength under the one-person-one-vote principle. *See* John Hart Ely, *Democracy*

and Distrust 121-15 (1980). Nevertheless, there must be some tolerances in the machinery of majority rule under the Equal Protection Clause in order to take into account the values outlined above, as well as the practicalities of the local electoral processes established by states and cities for their own self-government Summary judgment for the City was therefore appropriately granted.

We allow the intervention of Mary Johnson, pursuant to Fed. R. App. P. 27 and Sixth Circuit Rule 8, as requested by plaintiffs.

Accordingly, the judgment of the District Court is AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CHARLES FRENCH, et al.	]	
	]	
v.	]	No. 3:91-0312
	]	Judge Higgins
BILL BONER, MAYOR, et al.	]	March 3, 1992

ORDER

In accordance with the memorandum contemporaneously entered, the motion for summary judgment of the defendant Metropolitan Government (filed January 21, 1992; Docket Entry No. 58) is granted. The motion for summary judgment of the plaintiffs (filed December 31, 1991; Docket Entry No. 54) is denied. All issues before this Court having been resolved on their merits, this action is dismissed with prejudice.

It is so ORDERED.

/s/ Thomas A. Higgins
Thomas A. Higgins
United States District Judge
3-2-92

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CHARLES FRENCH, et al.	]	
	]	
v.	]	No. 3:91-0312
	]	Judge Higgins
BILL BONER, MAYOR, et al.	]	March 3, 1992

M E M O R A N D U M

The Court has before it the motions for summary judgment of the plaintiffs (filed December 31, 1991; Docket Entry No. 54) and of the sole remaining defendant, the Metropolitan Government[1] (filed January 21, 1992; Docket Entry No. 58). The parties conceded in open court that there is no genuine issue as to a material fact and, therefore, that summary judgment is

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[1]The Metropolitan Government is the only party necessary for any relief to which the plaintiffs may be entitled. Therefore, all other defendants were dismissed pursuant to an agreed order entered May 1, 1991 (Docket Entry No. 5).

appropriate. Therefore, for the reasons discussed below, the Court grants the motion for summary judgment of the defendant Metropolitan Government, denies the motion for summary judgment of the plaintiffs, and dismisses the case.

I. FACTS AND PROCEDURAL HISTORY

The Metropolitan Government conducts general elections every four years on the first Thursday in August to elect the Mayor, Vice Mayor, thirty-five single-district Metropolitan Council members and five Metropolitan Council members-at-large. The plaintiffs and the Metropolitan Government agree that the Council districts apportioned in October 1981 pursuant to the 1980 federal decennial census are malapportioned in light of the 1990 federal decennial census.

In their amended complaint, the plaintiffs sought a declaratory judgment that the Council as it existed before the August 1, 1991 election was malapportioned, and the United States Constitution required reapportionment before the August 1, 1991, election. The plaintiffs also requested that the Court either order the Council to adopt a new, properly apportioned redistricting plan, or implement its own plan before the August election. Finally, the plaintiffs requested that the Court enjoin the councilmanic elections until the Council districts are properly apportioned according to the results of the 1990 federal census. The defendants moved to dismiss the action for lack of subject matter jurisdiction because the action was not ripe, and for failure to state a claim

upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

By order entered June 27, 1991 (Docket Entry No. 43), the Court granted the defendant's motion to dismiss for lack of subject matter jurisdiction because the matter was not ripe. The Court explained that "legislative reapportionment is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." Memorandum at 16 (entered June 27, 1991; Docket Entry No. 42)(quoting Reynolds v. Sims, 377 U.S. 533, 586, 84 S.Ct. 1362, 1394, 12 L.Ed.2d 506, 541 (1964)). The Court found that the

defendant had not "had an 'adequate opportunity' after receiving the latest census data to adopt a new redistricting plan and failed." Memorandum at 16. Therefore, since the Supreme Court has determined that legislative districts must be reapportioned at least every ten years to avoid becoming constitutionally suspect, Reynolds, 377 U.S. at 583-84, 84 S.Ct. at 1392-93, 12 L.Ed.2d at 539-40, this Court held that the defendant had until October 1991 to adopt a new redistricting plan. Memorandum at 16. Until then, the Court declined to predetermine whether a constitutional violation had occurred. Id.

The Court of Appeals, also relying on Reynolds, affirmed this Court's decision to not enjoin the August 1, 1991, election. French v. Boner, 940 F.2d 659,

___ (6th Cir. 1991)(unreported disposition). The Court of Appeals, however, concluded "that the issue of whether the impending election may be conducted, or must be enjoined, is ripe for decision," since "the necessary facts are known" which would allow the court to reach an effective decision. Id. The Court of Appeals therefore vacated this Court's order dismissing the case on ripeness grounds, and remanded the case for further consideration of the remaining issues. Id.

II. DISCUSSION

The plaintiffs in the seminal case of Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962) sued under 42 U.S.C. §§ 1983 and 1988, alleging essentially that the 1901 Tennessee statute apportioning seats in the state General

Assembly denied them "the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes." Id. at 187-88, 82 S.Ct. at 694, 7 L.Ed.2d at 668 (quoting the complaint). The district court dismissed the action for lack of subject matter jurisdiction and failure to state a claim for which relief could be granted. Id. The Supreme Court held that the district court had subject matter jurisdiction, and "that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief. . . ." Id. at 197-98, 82 S.Ct. at 699, 7 L.Ed.2d at 674. The Supreme Court specifically declined "to consider what remedy would be most appropriate if appellants prevail at the

trial." Id. at 198, 82 S.Ct. at 699, 7 L.Ed.2d at 674.

Two years later, in Reynolds, the Supreme Court was faced with the task "of determining the basic standards and stating the applicable guidelines for implementing [the] decision in Baker v. Carr." Reynolds, 377 U.S. at 559, 84 S.Ct. at 1380, 12 L.Ed.2d at 525. Reynolds, like Baker, was a case challenging the apportionment of a state legislature. In Reynolds, the Supreme Court reaffirmed the concept of "one person, one vote" it had announced in Gray v. Sanders, 372 U.S. 368, 381, 83 S.Ct. 801, 809, 9 L.Ed.2d 821, 830 (1963). The Court also recognized

> that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place or residence impairs basic

> constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race or economic status.

Reynolds, 377 U.S. at 566, 84 S.Ct.at 1384, 12 L.Ed.2d at 529-30. The Court was aware, however, that there may exist circumstances under which the mandate of "one person, one vote" might not be achieved, but under which an apportionment scheme might still pass constitutional muster. The Court queried: "Our problem, then, is to ascertain . . . whether there are any constitutionally cognizable principles which would justify departures from the basic standard of equality among voters in the apportionment of seats in state legislatures. Id. at 561, 84 S.Ct. at 1381, 12 L.Ed.2d at 526-27.

The Supreme Court found just such a "constitutionally cognizable principle" in

decennial reapportionment. The Court's language bears reprinting in full:

> That the Equal Protection Clause requires that both houses of a state legislature be apportioned on a population basis does not mean that States cannot adopt some reasonable plan for periodic revision of their apportionment schemes. Decennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth. . . . Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system, although undoubtedly reapportioning no more frequently than every 10 years leads to some imbalance in the population of districts toward the end of the decennial period and also to the development of resistance to change on the part of some incumbent legislators. In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation. While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the

> minimal requirements for maintaining a reasonably current scheme of legislative representation.

Id. at 583-84, 84 S.Ct. at 1392-93, 12 L.Ed.2d at 539-40 (emphasis added).[2] The defendant in this case, the Metropolitan Government, has a plan for decennial reapportionment. There is no dispute that the defendant, unlike the defendants in Baker and Reynolds, follows this plan. Nor is their any dispute that the plan based on the 1990 federal decennial census is constitutional.[3] Therefore, under

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[2]Reynolds was applied to "the election of local government officials from districts of disparate population" by Avery v. Midland County, 390 U.S. 474, 478-79, 88 S.Ct. 1114, 1117, 20 L.Ed.2d 45, 50 (1968).

[3]In its prior decision, this Court refused to enjoin the August 1, 1991, election. French v. Boner, 771 F.Supp. 896 (M.D.Tenn. 1991). The election was held under the 1981 apportionment plan. Subsequently, on September 5, 1991, a run-off election was held. At the same time, the voters of Metropolitan Nashville and

Reynolds, there is no constitutional violation.[4] Since the Equal Protection

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Davidson County approved the 1991 plan of reapportionment submitted by the Metropolitan Council. There is no claim that the 1991 plan either intends to, or has the effect of, discrimination on the basis of race. Nor is there any claim that the Metropolitan Charter, under which the plan was devised, violates the Tennessee or United States Constitutions.

[4]Legislative reapportionment more frequently than every ten years, although not required, is permissible. Reynolds, 377 U.S. at 583-84, 84 S.Ct. at 1393, 12 L.Ed.2d at 540; Garza v. County of Los Angeles, 918 F.2d 763, 772 (9th Cir. 1990), cert. denied, ____ U.S. ____, 111 S.Ct. 681, 112 L.Ed.2d 673 (1991). "The Court has never hinted that plaintiffs claiming present Voting Rights Act violation should be required to wait until the next census before they can receive any remedy." Garza, 918 F.2d at 772-73.

Plaintiffs in the case before the Court, therefore, misinterpret Reynolds and Garza when they argue that the Sixth Circuit has already "implicitly rejected" the rule announced by the Court today by finding that this case is ripe for adjudication. Plaintiffs' response to defendant's motion for summary judgment at 12 (filed January 31, 1992; Docket Entry No. 63). The Court of Appeals held that the case was ripe because "the necessary facts are known as to the August 1, 1991,

Clause does not require more, the defendant's motion for summary judgment must be granted.

The cases cited by plaintiffs are distinguishable on their particular facts, and do not alter the basic teaching of Reynolds. Plaintiffs most strenuously argue that Sudekum v. Hayes, 414 F.2d 41 (6th Cir. 1969) is controlling in this case. Plaintiffs' response to defendant's motion for summary judgment at 21 (filed January 31, 1992; Docket Entry No. 63). In Sudekum, the Sixth Circuit affirmed a summary judgment of this Court applying the "one man, one vote" rule to a plan

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election." French v. Boner, 940 F.2d 659 (6th Cir. 1991) (unpublished disposition). This was not a case, by contrast, where "the abstractness of the wrongs involved prevent meaningful or effective adjudication." Id. (citing Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)).

reapportioning the legislative districts for the Quarterly County Court of Sumner County. Sudekum, 414 F.2d at 43.[5]

The parties before the district court in Sudekum conceded that the Quarterly County Court was malapportioned. Id. (appendix A). After several hearings at which reapportionment plans were proposed and rejected, the district court implemented a reapportionment plan substantially similar to one proposed by the defendants. Id. at 43-44. The court ordered a special election under the new plan and ordered the newly elected

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[5]The issue on appeal was not that the district court's proposed plan violated the "one man, one vote" rule. Rather, it was that the proposed plan violated Article 6, Section 15 of the Tennessee Constitution. Sudekum, 414 F.2d at 42. This Court, therefore, will focus on the opinion of the district court in Sudekum, as that is the opinion on which the plaintiffs rely.

Justices of the Peace to hold office until their successors were elected at the next regularly scheduled general election. The Court also ordered the present Justices of the Peace, who had been elected under the old plan, to "consider only routine matters" at their meeting on July 14, 1969. Id. at 44-45.

Sudekum is a well-reasoned case in which the court remedied an unconstitutionally structured apportionment scheme. However, it does not control the Court's decision in this case. The case presently before the Court involves a constitutionally permissible plan of decennial reapportionment, toward the end of which there were population imbalances. Reynolds, 377 U.S. at 583, 84 S.Ct. at 1393, 12 L.Ed.2d at 540. By contrast, there is no discussion of a

similar, regularly scheduled reapportionment plan in Sudekum, a case decided five years after the Supreme Court decided Reynolds.

The "reasonably conceived plan" of decennial reapportionment is, of itself, sufficient to guarantee the constitutionality of the councilmanic elections held August 1, 1991. Reynolds, 377 U.S. at 583, 84 S.Ct. at 1393, 12 L.Ed.2d at 540. No more is required. There being no such plan in effect in Sudekum, the court was justified in holding special elections and imposing other restrictions on the interim Justices of the Peace. "[L]egislative reapportionment is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a

legislature fails to reapportion according to constitutional requisites in a timely fashion after having had an adequate opportunity to do so." Id. at 586, 84 S.Ct. at 1394, 12 L.Ed.2d at 541. Since the defendant Metropolitan Government did reapportion in a constitutional manner within ten years of the 1981 reapportionment, no judicial action is appropriate.

The other cases cited by plaintiffs also are distinguishable. In Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990), cert. denied, ___ U.S. ___, 111 S.Ct. 681, 112 L.Ed.2d 673 (1991), the Ninth Circuit affirmed the district court's requirement of redistricting between regularly scheduled elections based on decennial reapportionment. Id. at 777. The special elections were

ordered by the court, not because of population imbalances between censuses, but because the apportionment plan adopted by the county in 1981 both intended to, and had the effect of, diluting Hispanic voting strength. Id. at 769-72. By contrast, there is no claim that either the 1981 or the 1991 Davidson County reapportionment plans intend to or have the effect of discrimination on the basis of race.

The New York City Board of Estimate was composed of the elected presidents of the five city boroughs and three members elected at-large. Board of Estimate v. Morris, 489 U.S. 688, 690, 109 S.Ct. 1433, 1436, 103 L.Ed.2d 717, 725 (1989). The composition of the board violated the Equal Protection Clause of the Fourteenth Amendment because there was "gross

deviation" in the population of the boroughs, and each of the borough presidents had equal voting power on the board. Id. at 692-94, 109 S.Ct. at 1437-38, 103 L.Ed.2d at 726-28. There was no "reasonably conceived plan" of reapportioning the board based on population. Reynolds, 377 U.S. at 583, 84 S.Ct. at 1393, 12 L.Ed.2d at 540. Instead, the city argued that the composition of the board should not be changed since it "accommodates natural and political boundaries as well as local interests," and it "has been effective." Board of Estimate, 489 U.S. at 702, 109 S.Ct. at 1442, 103 L.Ed.2d at 733.

Watkins v. Mabus, 771 F.Supp. 789 (S.D.Miss. 1991) aff'd, ___ U.S. ___, 112 S.Ct. 412, 116 L.Ed.2d 433 (1991) is the case cited by the plaintiffs which is most

closely analogous to the case presently before the Court. The Mississippi Constitution was amended in 1979 to require reapportionment of the state legislature in 1982 and every ten years thereafter. Watkins, 771 F.Supp. at 791 n.1. The legislature was reapportioned in 1982, and again in 1991 (although it was not required to be reapportioned until 1992). Id. at 792. By this time, under the 1982 plan, there was a large population deviation between districts. Id. at 791. Indeed, the district court held that, "although the legislative districts under the 1982 plan are doubtless unconstitutionally malapportioned for a full four-year term of office, . . . they may be constitutionally utilized for interim relief." Id. at 807. As the 1991

legislative election was imminent, and the 1991 plan had not been approved, the district court ordered that the election be held under the 1982 plan, and that the legislators elected under that plan hold office until a new plan could be approved. Id. At that time, the court would order a special election under the new plan. Id.

It appears to this Court that the district court in Watkins was acting as a quasi-arbitrator between the parties. The Mississippi Legislature took upon itself the task of reapportionment one year before it was constitutionally required. For many reasons, both racially and politically motivated, the legislature could not devise a plan based on the 1990 federal decennial census before the upcoming election. Given those specific facts, the district court reached a result

which, although not constitutionally mandated, was constitutional.

The Supreme Court's one-sentence affirmance of the district court's holding in Watkins does not shed any light on the matter.[6] Therefore, The Supreme Court not having specifically overruled the well-established and well-reasoned rule in Reynolds,[7] this Court believes that Reynolds is still the controlling law. The district court in Ramos v. Illinois, No. 90-C-7211, 1992 WL 7831 (N.D.Ill. Jan. 2, 1992), a case decided after the Supreme Court affirmed Watkins, reached this same conclusion.

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[6]The entire Supreme Court decision is a full paragraph. However, all but one sentence of the decision concerns absentee ballot procedures, an issue not before this Court.

[7]In fact, the Supreme Court did not cite Reynolds in its decision in Watkins.

In Ramos, a class of qualified Chicago voters sought injunctive and declaratory relief to postpone the regularly scheduled spring 1991 aldermanic elections until after the city reapportioned the districts based on the 1990 federal decennial census.[8] Ramos, 1992 WL 7831 at *1. The plaintiffs claimed that holding elections under the current plan "violates the rights of Hispanic voters because a substantial increase in the number of Hispanic citizens in Chicago will not be recognized until the 1995 elections, . . . and that some delay in recognizing

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[8]The city of Chicago follows essentially the same plan for reapportioning aldermanic (or councilmanic) districts as the defendant Metropolitan Government in this Case. Both are required to reapportion following the federal decennial census. In addition, both governing bodies are elected for four year terms in the same years (ie. 1987, 1991, 1995).

population shifts within the City violates the rights of each citizen to have "their vote count as much as every other vote." Id. Unsuccessful in their attempt, the Ramos plaintiffs next sought to require redistricting and a special election based on the 1990 federal decennial census no later than the March 1992 general elections. Id.

The district court held that the statutory scheme for reapportioning the aldermanic districts violated neither the Voting Rights Act nor constitutional norms. Id. at *3.

> The thrust of the plaintiffs' claims has to be and is that a system that locks into place elected officials for four years, shortly before a redistricting on the basis of new census data becomes possible, cannot pass muster. We disagree. Reapportionment following a decennial census is the constitutional norm, and we are not aware of anything that suggest that Congress intended to change that

> standard for the purpose of the Voting Rights Act.

Id. at *3-4 (citing Reynolds, 377 U.S. at 583-84, 84 S.Ct. at 1392-93, 12 L.Ed.2d at 539-40).

The Supreme Court, in deciding Reynolds, considered the lagtime that would inevitably arise between decennial censuses and regularly scheduled reapportionment following the census. This gap was built into the Reynolds formula. As long as there exists a "reasonably conceived plan" for periodic reapportionment, with reapportionment taking place no less frequently than every ten years, no voter's constitutional rights are abridged. Reynolds, 377 U.S. at 583, 84 S.Ct. at 1393, 12 L.Ed.2d at 540.

"Mathematical exactness," although desirable, is neither required nor "a

workable constitutional requirement." Id. at 577, 84 S.Ct. at 1390, 12 L.Ed.2d at 536. That is not to say that we should not strive to achieve the goal of "one person, one vote." It is a basic premise of our system of government that "[o]ther rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17, 84 S.Ct. 526, 535, 11 L.Ed.2d 481, 492 (1964). However, if this Court were to require the defendant to hold a special election, the Court surely would be opening a pandora's box of litigation. The Court could be required to determine, at each election, whether the legislative districts are still constitutionally apportioned based on the most recent decennial census. If they are, will they continue to be? Will the Court need to

maintain jurisdiction between elections? If they are not, what plan will be implemented? These examples may seem extreme at first glance, but upon further contemplation they are very possible. Since the Supreme Court has determined that decennial reapportionment following the federal census meets constitutional standards, this Court will not require more.

III. CONCLUSION

For the reasons discussed above, the defendant's motion for summary judgment is granted. The plaintiffs' motion for summary judgment is denied. Accordingly, the case is dismissed with prejudice.

An appropriate order shall be entered.

/s/ Thomas A. Higgins
Thomas A. Higgins
United States District Judge
3-2-92

NOS. 91-5811/91-5875
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHARLES FRENCH Plaintiff-Appellant, LUDEYE WALLACE, DURWARD HALL, RAYMOND THOMASSON, MARYDA COLDWICK, Plaintiffs v. BILL BONER, et al., Defendants METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE, Defendant-Appellee.	)	Filed August 8, 1991 ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

Before: MERRITT, Chief Judge; KEITH, Circuit Judge; and CELEBREZZE, Senior Circuit Judge.

MERRITT, Chief Judge. Plaintiff appeals the District Court's dismissal on grounds of ripeness of his complaint seeking to enjoin the August 1, 1991, election of 35 council members of

Metropolitan Nashville, Davidson County, Tennessee, on grounds of malapportionment. The District court filed its comprehensive opinion and entered its order on June 27, 1991. We expedited briefing and conducted an expedited hearing on July 18, 1991, and announced from the bench our decision declining to enjoin the election but remanding the case for further proceedings.

A case is not ripe if its prematurity or the abstractness of the wrongs involved prevent meaningful or effective adjudication. Buckley v. Valeo, 424 U.S. 1 (1976); Young v. Klutznick, 652 F.2d 617 (6th Cir. 1981)(holding that claims contesting undercount of minorities in 1980 census not ripe for review). Ripeness is ascertained by determining whether the issues tendered are

appropriate for judicial review and the nature of the hardships which will be suffered by the parties if judicial relief is denied. Young, 652 F.2d at 625.

In Young, the Court held that, although the 1980 census figures were known, the claims of injury in apportioning legislative and congressional seats in Michigan due to the undercount of minorities was too speculative until the Michigan legislature acted to use, or declined to use, the contested census information.

In the case before us, the necessary facts are known as to the August 1, 1991, election. The district lines, drawn according to the 1980 census, are known and are known to be malapportioned according to the 1990 census. The problem is that the Metro government did not

receive the 1990 census. The problem is that the Metro government did not receive the 1990 census figures until mid-March leaving insufficient time to reapportion before the August 1, elections, given the procedural requirements for reapportionment under § 18.06 of the city charter and the fact that reapportionment must be completed and district lines established almost 90 days in advance of the election. We conclude therefore that the issue of whether the impending election may be conducted, or must be enjoined, is ripe for decision.

Reynolds v. Simms, 377 U.S. 533 (1964), holds that "a State [must have] a reasonably conceived plan for periodic readjustment" of legislative electoral districts. Id. at 583. Reynolds directs that the federal courts should not

intervene until a legislature has failed to reapportion constitutionally after it has had adequate opportunity to do so. Id. at 586. In light of the lateness of the census data, given the time needed under the city charter and state election laws for the local government to turn the data into election districts and then conduct an election, the Metropolitan government did not have an adequate opportunity to reapportion for the August 1, 1991, elections. Thus the immediately impending August 1 elections fall within the Reynolds time frame. Plaintiffs' request for injunctive relief to enjoin the August 1 election is therefore denied because the conduct of these elections now pursuant to the city charter is not unconstitutional.

Our decision does not reach the issues

of the constitutionality of the apportionment plan proposed by the Metropolitan Planning Commission under § 18.06 of the charter or any alternative plan that may be enacted under § 18.06 of the Charter at the September 5, 1991 referendum, nor the issue of whether Metropolitan Nashville, Davidson County may wait until 1995 to hold the next election of council members once a valid reapportionment plan has been established. These issues have not been decided on the merits by the District Court.

Accordingly, we AFFIRM the result reached by Judge Higgins below in refusing to enjoin the August 1, 1991, election, but we vacate the order dismissing the case on grounds of ripeness and REMAND for further consideration of the remaining issues.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CHARLES FRENCH, et al.	]	June 27, 1991
	]	
v.	]	No. 3:91-0312
	]	Judge Higgins
BILL BONER, MAYOR, et al.	]	

ORDER

In accordance with the memorandum contemporaneously entered, the motion (filed May 10, 1991; docket Entry No. 10) of the defendant, The Metropolitan Government of Nashville and Davidson County, Tennessee, to dismiss for lack of subject matter jurisdiction is granted and this action is dismissed.

It is so ORDERED.

/s/ Thomas A. Higgins
Thomas A. Higgins
United States District Judge
6-27-91

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CHARLES FRENCH, et al.	June 27, 1991
v.	No. 3:91-0312
BILL BONER, MAYOR, et al.	Judge Higgins

MEMORANDUM

This matter is before the court as a reapportionment action pursuant to the fourteenth and fifteenth Amendments of the United States Constitution, the Voting Rights Act of 1965, as amended (42 U.S.C. § 1971 et seq.), and 42 U.S.C. §§ 1983 and 1988.

The plaintiffs are three members of the Metropolitan Council, two white and one black; and four private citizens of Nashville, Tennessee, two white and two black.

Defendant is The Metropolitan

government of Nashville and Davidson County.[1] The Metropolitan Government is a consolidated government, pursuant to Section 9, Article XI of the Tennessee Constitution. It is a consolidation of the former city government of Nashville and the former county government of Davidson County, Tennessee. As such, it carries on general governmental functions of a local government in the State of Tennessee, pursuant to its Charter.

The Metropolitan Government will conduct general elections on August 1, 1991, to elect the Mayor, Vice Mayor, five Council members-at-large and thirty-five single-district Council members in the

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[1]The individual defendants and defendants Planning commission of The Metropolitan Government and Davidson County Election Commission, which were named in the original complaint, have been dismissed, pursuant to an Agreed Order entered on May 1, 1991.

forty-member Council. The plaintiff's contend, and the defendant concedes, that the current Council districts, which were apportioned in 1981 based upon the 1980 census, are malapportioned in light of the 1990 census.

The plaintiffs have filed an amended complaint seeking a declaratory judgement that the present Metropolitan Council is malapportioned and that the United States Constitution mandates reapportionment prior to the next Council election. The elections are presently scheduled for August 1, 1991, and the qualifying date for candidates was noon on June 6, 1991.[2] The plaintiffs request that the Court

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[2]To be qualified as a candidate for the Metropolitan Council, a person must have lived within the area of The Metropolitan government for one year and within the district for six months. Metropolitan Charter, section 3.02

order the Metropolitan Council to adopt a properly apportioned plan, or, in the alternative, that the Court fashion a reapportionment plan, before the next election. Furthermore, the plaintiffs seek a preliminary injunction to enjoin any councilmanic election pending the proper apportionment of the Council based upon the 1990 federal census.

Jurisdiction is based upon 28 U.S.C. § 1343 for causes of action arising under 42 U.S.C. §§ 1971, 1973, 1983 and 1988; and 28 U.S.C. § 1331 for claims based on the Fourteenth and Fifteenth Amendments to the Constitution.

I.

On April 24, 1991, the plaintiffs filed a motion for a show cause hearing (Docket Entry No. 2). On April 25, 1991, the court entered a show cause order (Docket

Entry No. 4) requiring the defendant to show cause why the Court should not issue a preliminary injunction to delay the August 1, 1991, Metropolitan councilmanic elections pending the adoption of a reapportionment plan based upon the 1990 census.

On May 10, 1991, the defendant filed a motion to dismiss the action on two grounds: (1) lack of subject matter jurisdiction because the action is not ripe and (2) failure to state a claim upon which relief can be granted under Rule 12(b)(6), Fed. R. Civ. P.[3] (Docket Entry

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[3]Rule 12(b), Fed. R. Civ. R., provides that if, on a motion asserting failure to state a claim for relief, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgement and disposed of according to Rule 56, Fed. R. Civ. P. Either the pleader or the moving party or both may trigger the conversion provision into operation by submitting outside material. In the instant action,

No. 10).

On May 22, 1991, the Court held a show cause hearing. The Court heard oral arguments on the defendant's motion to dismiss and the plaintiffs' application for preliminary injunction on June 5, 1991. Each party has submitted proposed findings of fact and conclusions of law, which the Court has considered, along with the numerous other documents filed in this action.

For the reasons set forth in this

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both parties submitted outside material in the form of affidavits and exhibits sufficient to convert the motion from one to dismiss to one for summary judgement.

However, the Court disposes of the action based only upon the defendant's first ground for dismissal -- lack of subject matter jurisdiction because the action is not ripe. Therefore, since the Court does not reach the defendant's second ground for dismissal, which is based upon Rule 12(b)(6), Fed. R. Civ. R., the motion will not be converted to one for summary judgement.

memorandum, the Court finds in favor of the defendant on its motion to dismiss.

II.

The parties have stipulated to certain facts, which are incorporated herein, along with the salient facts gleaned from the two hearings in the matter.

The Metropolitan Charter[4] provides, inter alia, that the Metropolitan Council will be the legislative body for the government. The Council is divided into thirty-five single-member districts and five Council positions elected at large. Council members, along with the Mayor and Vice Mayor, are elected to four-year terms.

In 1965, the Charter was amended to provide that, after 1971, general

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[4]The Charter of The Metropolitan Government became effective on April 1, 1963, having been adopted in 1962.

elections are to be held every four years on the first Thursday of August. All persons who are lawfully registered and who are qualified to vote for members of the Tennessee General Assembly shall be eligible to vote in Metropolitan elections.

There have been two reapportionments of The Metropolitan Government. The Council was reapportioned prior to the 1971 elections based on the data received from the 1970 census. By March 11, 1971, the Planning Commission had adopted a reapportionment plan (Ordinance No. 71-1389) and filed it with the Council. This ordinance was introduced in the Council on March 16, 1971, passed on third and final reading on May 4, 1971, and approved by the Mayor on May 6, 1971.

The reapportionment plan (Ordinance No.

81-701), based on the 1980 census, was introduced in the Council on September 1, 1981, and passed on third and final reading on October 6, 1981. The ordinance became effective without the signature of the Mayor on October 20, 1981. Both the 1983 and the 1987 Metropolitan elections were based on the 1981 reapportionment ordinance.

John Palm, Division Manager of the Advance Planning and Research Division of the Metropolitan Planning Commission, testified that an important difference between the 1971 reapportionment and the current reapportionment is the consideration of race, now required by the 1982 amendment to the Voting Rights Act. He testified that this difference makes the 1971 and 1991 redistricting not comparable. Further, mr. Palm speculated

that, had they not considered race, the Planning Commission staff would have had a draft of a redistricting plan completed at the end of March 1991.

On May 30, 1990, the Metropolitan Planning Commission staff prepared a schedule for reapportionment, which was to be based on the 1990 census. The staff proposed in the schedule that reapportionment be completed prior to the August 1991 elections. On July 12, 1990, the Planning Commission approved criteria for reapportionment of the Council. The primary criteria included: a required population balance, a required racial composition and internally consistent and logical geographical boundaries.[5] On

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[5]Other criteria generally instructed the staff to use natural features when constructing boundaries, to avoid crossing the Cumberland River, if possible, to attempt not to place any independent city

August 5, 1990, the Executive Director of the Planning Commission wrote to the Vice Mayor, stating that, given the availability of data and the timetables already in place, it could not be possible to complete reapportionment before the August 1991 election.

On December 27, 1990, the Planning Commission and the Planning and Zoning Committee of the Council held a joint meeting. One of the topics discussed was Council reapportionment. The Planning Commission staff was instructed to begin its work on reapportioning as quickly as the census data became available, and to take the time necessary to do the job thoroughly, but to take no more time that was necessary. After the Planning

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in more that one district and to respect existing districts to the extent possible.

Commission staff completed their work, the Planning Commission and the Council would determine their schedules to complete a reapportionment plan.

On January 4, 1991, the Planning Commission acquired a computer software program for reapportionment, having previously determined through estimates of population growth that reapportionment probably would be required.

In February, a Planning Commission staff member called the Census Bureau and asked when the 1990 census data would be released. Since Tennessee did not have state-wide elections this fall, it was not given priority. In fact, it was listed as a fourth-tier state. The staff member was told that data for Tennessee would not be released until March or April, even though Nashville was scheduled to hold local

elections in August.

The Tennessee State Planning Office received the official 1990 census data on March 5, 1991. Mr. Palm testified that a Planning Commission staff member who had contacted the State office in February was told to contact the University of Tennessee in order to obtain the results most expeditiously. On February 11, 1991, a Planning Commission staff member called the University of Tennessee and was informed that the Commission could get the data most quickly on magnetic tape. However, the university would have to translate the data into a different format and separate the Davidson County information before the Planning Commission could use it.

On March 15, 1991, the Planning Commission staff obtained the 1990 census

data on magnetic tape from the Center for Business and Economic Research of the University of Tennessee at Knoxville.

The 1990 census figures for Davidson County revealed a total population of 510,781, of which 381,737 are white and 129,044 are non-white. In other words, 74.7 percent are white and 25.3 percent are non-white. Black persons constitute 92 percent of the non-white population. According to the 1990 census, the councilmanic districts as presently drawn have significant imbalances of population. For example, the Seventeenth Councilmanic District has a population of 9,959, while the Thirteenth Councilmanic District has a population of 27,439.

When the 1990 census data is applied to the existing councilmanic districts, seven single-member districts have a majority of

non-whites: district two is 83.7 percent non-white; district five is 81.1 percent non-white; district sixteen is 55.7 percent non-white; district seventeen is 73.6 percent non-white; district nineteen is 68.9 percent non-white; district twenty is 90.3 percent non-white; and district twenty-one is 88.4 percent non-white. Of those seven districts, six are represented by black Council members, while one, district sixteen, is represented by a white Council member.

On April 3, 1991, the plaintiffs, through counsel, wrote to the Metropolitan Legal Director, advising her that, if a reapportionment plan was not developed in sufficient time for the august 1991 councilmanic elections, then the plaintiffs would institute legal proceedings to compel the Council to

reapportion before the August 1991 elections. Copies of this letter were sent to the Planning Commission.

In the process of completing the reapportionment plan, the Planning Commission produced at least twelve computer-generated maps.[6] One of these maps was selected and, on April 23, 1991, the Planning Commission staff held a briefing session in which it presented its plan to the Council and the public. The staff recommendation was developed without consulting the public or Council members, other that Council member John Summers, who is also a member of the Planning Commission.

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[6]The census data was organized based on census block boundaries, which were the smallest unit of information provided by the Census Bureau. The precinct or district units were too large to work with, according to the Planning Commission staff.

This plan placed two incumbent white Council members in the same district and two incumbent black Council members in the same district. (Messrs. Johns and Odom, both white, in district twenty-four, and Messrs. McAllister and Wallace, both black, in district twenty-one). On April 25, 1991,[7] this plan was presented to the Planning Commission for approval as the reapportionment plan, pursuant to section 18.06 of the Metropolitan Charter. At this meeting, the staff's recommended plan was amended by the Planning Commission. One amendment redrew the line between districts twenty-three and twenty-four so that the two white Council members, Mr.

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[7]At the Planning Commission meeting of April 25, 1991, Chairperson Bush and members Summers, Vance, Fischer, Dugger, Baker, McKissack, Smith and Mayor Boner were present. Ms. McKissack was the only black member of the Commission.

Johns and Mr. Odom, were no longer in the same district. The Planning Commission did not modify the plan to accommodate a similar request by Councilman Wallace. The staff stated to the Commission that the requested modification would breach the natural boundary of the Cumberland River, violate the "one person, one vote" principle and impact the district's racial character.

Mr. Palm testified that in order to solve the Odom/Johns problem, only one district line had to be moved. The McAllister/Wallace problem was more complex because it involved three district and because numerous lines would have to be moved to meet the population requirements. He testified that an important criteria was to maintain the integrity of neighborhoods, if possible.

The staff, in presenting the plan to the Planning Commission, excluded from the population of Davidson County approximately 2,873 persons incarcerated in the various penal institutions in Davidson County, According to Susan Mattson, employed by the Tennessee Department of Corrections as Assistant to the Commissioner for Planning and Research, there are 257 state inmates incarcerated in Metropolitan Nashville who are statutorily eligible to vote.

The reapportionment plan, as amended and adopted by the Planning Commission, subsequently was filed with the Metropolitan Council on April 30, 1991, and became Ordinance No. 91-1600. The Council, at its May 7, 1991, meeting, the first meeting after the plan had been filed, deferred first reading of the

reapportionment plan to its May 21, 1991, meeting. This was at the request of plaintiff Wallace.

On May 21, 1991, the Metropolitan Council met in regular session and passed Ordinance No. 91-1600 on first reading. The Council met in special session on June 3, 1991, and voted against the ordinance.

The boundaries of the thirty-five single-member districts are specified in Appendix Two of the Metropolitan Charter. These boundaries were last changed on October 6, 1981, as the result of the adoption of Ordinance No. 81-701. Section 18.06 of the Charter requires that the Metropolitan Planning Commission propose a revision to these boundaries within six months of the receipt of the data from each decennial federal census, if such data reflects that the districts are

malapportioned. The boundaries of the districts for the elected school board members must be similarly modified.

The Metropolitan Council is then required to either approve or disapprove the redistricting plan by ordinance, which must be adopted on three separate days by a majority of the members of the Council. If the plan is disapproved, the Council may submit the redistricting plan to the voters for their approval at a referendum to be held within ninety days. The Council may submit its own redistricting plan to the voters at this referendum as an alternative to the redistricting plan proposed by the Planning Commission. If the Council does not approve the redistricting plan submitted by the Planning Commission or call for a special referendum election, Council members are

deprived of their salaries until they take one action or the other.

III.

The plaintiffs have brought this action challenging the apportionment of the thirty-five Metropolitan Council districts on the ground that the recently released 1990 decennial federal census data has revealed that the districts that were established in 1981 no longer conform to the "one person, one vote" requirements of the United States Constitution, the Voting Rights Act of 1965, as amended, the Tennessee Constitution, state law and the Metropolitan Charter. The plaintiffs also contend that The Metropolitan Government is diluting minority voting strength in violation of the United States Constitution, the Voting Rights Act and the Tennessee Constitution.

Originally, the plaintiffs sought to enjoin the August 1, 1991, elections because of the potential that The Metropolitan Government would adopt Ordinance No. 91-1600. However, the Council subsequently rejected that ordinance. Thereafter, during the hearing on this matter, the plaintiffs conceded that their challenge to Ordinance No. 91-1600 is not ripe for adjudication, since the Council rejected it. The plaintiffs still contend that the August 1, 1991, elections should be enjoined because the current Council districts are malapportioned.

The Metropolitan Government maintains that this action is not ripe for review because it has yet to conclude redistricting of the Council and no reapportionment plan has been adopted.

The current status of the process is that the rejected Planning Commission reapportionment plan, Ordinance No. 91-1600, and possibly a plan proposed by the Council, will go before the voters in a referendum election. The defendant contends that the validity of a redistricting plan cannot be determined until one is adopted by referendum. The defendant asserts that, until that process is completed, any claims based on a proposed redistricting plan are clearly not ripe. The plaintiffs have conceded this with regard to Ordinance No. 91-1600.

In order for the federal courts to have jurisdiction over a case, the plaintiff must allege an actual case or controversy. O'Shea v. Littleton, 414 U.S. 488, 493-94, 94 S.Ct. 669, 674-75, 38 L.Ed.2d 674, 682 (1974); Brown v. Ferro Corp., 763 F.2d

798, 801 (6th Cir.), cert. denied, 474 U.S. 947 (1985). "Abstract injury is not enough. It must be alleged that the plaintiff `has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged statute or official conduct. The injury or threat of injury must be both `real and immediate,' not `conjectural' or `hypothetical.'" O'Shea, 414 U.S. at 494, 94 S.Ct. at 675, 38 L.Ed.2d at 682 (citation omitted); Brown, 763 F.2d at 801; see also City Communications, Inc. v. City of Detroit, 888 F.2d 1081, 1089 (6th Cir. 1989). "The ripeness doctrine not only depends on the finding of a case and controversy and hence jurisdiction under Article III, but it also requires that the court exercise its discretion to determine if judicial resolution would be desirable

under all circumstances." Brown, 763 F.2d at 801.

The plaintiffs allege that allowing the August 1, 1991 elections to take place under the currently malapportionment Council districts will result in a denial of their fundamental rights to equal protection of the laws. However, the Supreme Court of the United States in Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964), on facts similar to the present situation, specifically stated that, under certain circumstances, elections can go forward under a malapportioned plan.

> Remedial techniques in this new and developing area of the law will probably often differ with the circumstance of the challenged apportionment and a variety of local conditions. It is enough to say now that, once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court

> would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan. However, under certain circumstances, such as where an impending elections is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid. In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.

Reynolds, 377 U.S. at 585, 34 S.Ct. at 1393-94, 12 L.Ed2d at 541 (emphasis added).[8]

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[8]Following Reynolds, other courts have withheld immediate injunctive or other equitable relief that would have affected an impending election. See Chisom v. Roemer, 853 F.2d 1186, 1192 (5th Cir. 1988); Simkins v. Gressette, 631 F.2d 287, 295-96 (4th Cir. 1980); Maryland Citizens for a Representative Gen. Assembly v. Governor of Md., 429 F.2d 606, 609-11 (4th

Further, the Court in Reynolds recognized that decennial reapportionment would comply with the Equal Protection clause, even if there was a population imbalance at the end of the decennial period.

> Decennial reapportionment appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and

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Cir. 1970); Banks v. Bd. of Educ. of Peoria, School Dist. No. 150, 659 F. Supp. 394, 398-403 (C.D. Ill. 1987); Dillard v. Crenshaw County, 640 F. Supp. 1347, 1361-63 (M.D. Ala. 1986); MacGovern V. Connolly, 637 F. Supp. 111, 115-16 (D. Mass. 1986); Knox v. Milwaukee County Bd. of Election Comm'rs, 581 F. Supp. 399, 405 (E.D. Wis. 1984); Martin v. Venables 401 F. Supp. 611, 620-21 (D. Conn. 1975); Dodson v. Mayor and City Council of Baltimore City, 330 F. Supp. 1290, 1299-1302 (D. Md. 1971).

The plaintiffs attempted to distinguish many of these cases on their facts. Of course, the holding of each case will turn on its own set of unique facts. However, the Court finds persuasive the fact that these courts specifically dealt with the effect of an impending election of the imposition of relief.

> growth . . . .Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system, although undoubtedly reapportioning no more frequently than every 10 years leads to some imbalance in the population of districts toward the end of the decennial period and also to the development of resistance to change on the part of some incumbent legislators. In substance, we do not regard the Equal Protection Clause as requiring daily, monthly, annual or biennial reapportionment, so long as a State has a reasonably conceived plan for periodic readjustment of legislative representation. While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation. And we do not mean to intimate that more frequent reapportionment would not be constitutionally permissible or practicably desirable. But if reapportionment were accomplished with less frequency, it would assuredly be constitutionally suspect.

Reynolds, 377 U.S. at 583-84, 84 S.Ct. at 1392-93, 12 L.Ed.2d at 539-40 (emphasis added).

The circumstances under which the Reynolds Court found it permissible to hold elections, even though the districts were malapportioned, are present in this action. The impending general elections are imminent, and the election machinery is already in progress. The candidates have qualified and are campaigning, the voters are preparing to make their choices and the election staff is readying the precincts. The Supreme Court has stated that these are valid considerations in this type of situation.

Although the plaintiffs maintain that the Planning Commission and Council acted in a lackadaisical manner and unreasonably delayed the redistricting process, the Court disagrees. The greater weight of the proof demonstrated that the Planning Commission used due diligence and

proceeded in a reasonable and orderly manner to produce a redistricting plan. The Planning Commission received the 1990 census data on March 15, 1991, and it has complied with all the requirements and deadlines set forth in the Metropolitan Charter.

The plaintiffs assert that the test of reasonableness was established in 1971, when a redistricting plan was proposed and adopted in a shorter time period. In light of the new requirements brought about by the 1982 amendment to the Voting Rights Act of 1965,[9] among other things,

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[9]Congress redefined the scope of section 2 of the Act to forbid not only those voting practices directly prohibited by the Fifteenth Amendment but also any practice `imposed or applied ... in a manner which results in a denial or abridgement of the right . . . to vote on account of race or color . . . .' United States v. Marengo County Com'n, 731 F.2d 1546, 1553 (11th Cir. 1984) (citing 42 U.S.C.A. § 1973(a) (emphasis added)).

the Court is unpersuaded that the 1991 process should be judged by the standard of the 1971 process. Fairly apportioning council districts pursuant to the many constitutional requirements is a time-consuming and sensitive process. It should not be unduly rushed at the risk of imprudent decision-making.

The Metropolitan Council districts were last apportioned in October 1981. The Supreme Court in Reynolds stated that there is no constitutional violation based upon apportionment until the government has had an "adequate opportunity" after receiving the latest census data to adopt a new redistricting plan and failed. According to Reynolds, reapportionment must occur at least every ten years or it becomes "constitutionally suspect." Therefore, the Metropolitan Government has

until October 1991 to adopt a new redistricting plan. Prior to that time, the Court will not predetermine whether a violation has occurred.

The Court notes that the Supreme Court in Reynolds also stated an important principle of federalism: "[L]egislative reapportionment is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." Reynolds, 377 U.S. at 586, 84 S.Ct. at 1394, 12 L.Ed. 2d at 541. "The Court has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts

should make every effort not to pre-empt." Wise v. Lipscomb, 437 U.S. 535, 539, 98 S.Ct. 2493, 2496, 57 F.3d 2d 411, 417 (1978).

Injunctive relief is one of the most powerful tools available to a court. The Court should not abandon its prudential concerns about exercising its powers until convinced that a certain course of action is necessary and appropriate.

The Court recognizes the serious imbalances in the existing Council districts.[10] However, the Metropolitan Government must be given an "adequate

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[10]The Court notes the wide disparities present in the existing Council districts and the fact that these figures are far about any deviations ever upheld by the Supreme Court of the United States. However the Court does not decide the constitutionality of allowing representation based on the existing malapportionment to continue until the next Metropolitan general elections in 1995.

opportunity" to adopt a redistricting plan before judicial intervention is proper. The fact that the Metropolitan Charter requires general elections to be held in August is inopportune. The Court is bound to follow precedent and allow the government to redistrict within the ten-year time period, which ends in October. The Court may intervene only if and when the Metropolitan Government has failed in its attempts to redistrict within the ten-year period.

IV.

Ripeness is a threshold question. Since the issue of reapportionment is now proceeding to the voters of The Metropolitan Government, judicial intervention is premature. Simply put, the present action fails the test of the ripeness doctrine.

Accordingly, the defendant's motion to dismiss is granted and the plaintiff's application for preliminary injunction is moot.

An appropriate order will be entered.

/s/ Thomas A. Higgins
Thomas A. Higgins
United States District
Judge/ 6-27-91

Case No: 92-5325
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

O R D E R

CHARLES FRENCH; RAYMOND THOMASSON;
MARYDA COLOWICK; MARIAN L. STEVENSON;
MARY L. CRAWLEY

Plaintiffs - Appellants

LUDYE WALLACE; DURWARD HALL;
GEORGE NELSON GLOVER

Plaintiffs

MARY JOHNSON

Intervenor

v.

Filed
June 9, 1992

BILL BONER, et al.

Defendant

METROPOLITAN GOVERNMENT OF NASHVILLE,
DAVIDSON COUNTY, TENNESSEE

Defendant - Appellee

BEFORE: MERRITT, Chief Judge;
KEITH, Circuit Judge and
CELEBREZZE, Senior Circuit Judge

Upon consideration of the petition for rehearing filed by the appellants',

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED.**

ENTERED BY ORDER OF THE COURT

/s/Leonard Green, Jr.

Leonard Green, Clerk